



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2020-0056; FRL-8737-01-R4]

Ocean Dumping; Modification of an Ocean Dredged Material Disposal Site Offshore Port

Everglades, Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is expanding the size of the EPA designated ocean dredged material disposal site (ODMDS) offshore of Port Everglades, Florida (referred to hereafter as the existing Port Everglades ODMDS), pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA). The primary purpose for the site modification is to enlarge the site to provide for the long-term disposal capacity to dump suitable material dredged from the Port Everglades Harbor in ocean waters. The modified site will be subject to monitoring and management to ensure continued protection of the marine environment.

DATES: *Effective:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OW-2020-0056. All documents in the docket are listed on the <http://www.regulations.gov> website.

FOR FURTHER INFORMATION CONTACT: Wade Lehmann, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562-8082; e-mail: Lehmann.Wade@epa.gov.

SUPPLEMENTARY INFORMATION: EPA proposed rulemaking on March 13, 2020, and re-released for further public review on May 22, 2020 (85 FR 14622 and 85 FR 31133), which was a proposal to expand the size of the Port Everglades ODMDs. Additionally, EPA is releasing a Finding of No Significant Impact and a final Environmental Assessment (EA), pursuant to the National Environmental Policy Act, which are available in the docket for this action (Docket ID No. EPA-R04-OW-2020-0056). EPA’s responses to comments received on the proposed rule and the draft EA are also available in the docket for this action.

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. sections 1401 to 1445. The EPA’s action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Port Everglades, Florida. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government ...	USACE Civil Works projects, and other Federal agencies
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments ...	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

a. History of disposal sites offshore of Port Everglades, Florida

There is currently one designated ODMDS off the coast of Port Everglades in Florida. The existing Port Everglades ODMDS is located three nautical miles offshore of Fort Lauderdale. EPA designated the Port Everglades ODMDS in 2005 with an area of 1.34 square nautical miles (nmi²).

The USACE Jacksonville District and EPA Region 4 identified a need to either designate a new ODMDS or modify the existing Port Everglades ODMDS. The reasons for modifying the ocean disposal capacity are based on future dredged material capacity requirements, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland disposal in the area.

EPA is expanding the existing Port Everglades ODMDS rather than designate a new site off the coast of Fort Lauderdale for ocean dumping of dredged material. The modification of the existing Port Everglades ODMDS for dredged material, however, does not mean that the USACE or the EPA has approved the use of the existing Port Everglades ODMDS or a modified Port Everglades ODMDS for open water disposal of dredged material from any specific project. Before any person can ocean dump dredged material at an ODMDS, EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and the USACE must issue a permit or other authorization document (e.g., contract specifications) for the transportation and disposal of dredged material and must attain concurrence from EPA. Under section 103 of the MPRSA, the USACE is the Federal agency that initially determines whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of Federal navigation projects, the USACE may implement the MPRSA directly in the Federal projects involving ocean disposal of dredged materials. The USACE relies on EPA's ocean dumping criteria when evaluating permit requests for (and implementing Federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and Federal projects involving ocean dumping of dredged material are subject to EPA review and concurrence under MPRSA 33 U.S.C. 1413(c). EPA may concur with

or without conditions or decline to concur on the permit, i.e., non-concur. If EPA concurs with conditions, the final permit or authorization must include those conditions. If EPA declines to concur (non-concurs), the USACE cannot issue the permit for ocean dumping of dredged material or authorize the disposal. EPA's site modification is supported by a final Environmental Assessment (EA), which EPA previously provided for public notice as draft and is available in the docket for this action (Docket ID No. EPA-R04-OW-2020-0056).

b. Location and configuration of the Port Everglades ODMDS

With this action, EPA expands the size of the Port Everglades ODMDS, which is at depths between -587 to -761 feet of water (-179 to -232 meters). The ODMDS expansion increases the area of the existing Port Everglades ODMDS from approximately 1.34 nmi² to 3.21 nmi². The ODMDS is bounded by the coordinates listed below. The coordinates for the site are in North American Datum 83 (NAD 83):

Modified Port Everglades ODMDS

A) 26°08.750'N, 80°01.000'W

B) 26°08.750'N, 80°02.578'W

C) 26°06.500'N, 80°02.578'W

D) 26°06.500'N, 80°01.000'W

The Site Management and Monitoring Plan (SMMP) allows EPA to adaptively manage the site to maximize its capacity, minimize the potential for mounding and loss of fine sediments outside of the site, and minimize the potential for any long-term adverse effects to the marine environment.

c. Management and Monitoring of the Site

The ODMDS is expected to receive dredged material from the Federal navigation project at Port Everglades Harbor, Florida, and dredged material from other applicants who obtain a permit for the disposal of dredged material at the ODMDS. All persons using the site shall comply with the conditions set forth in the most recent approved SMMP, which EPA (in conjunction with the

USACE) specifically developed for the ODMDS. The SMMP includes management and monitoring provisions to ensure that dredged materials disposed at the ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP includes provisions to avoid and minimize potential impacts to coral reefs present near Port Everglades. The SMMP for the ODMDS also addresses management of the site to ensure adverse mounding and dispersal of fine sediments does not occur and to ensure that disposal events minimize interference with other uses of ocean waters near the ODMDS.

d. MPRSA criteria

In evaluating the ODMDS, the EPA assessed the site according to the criteria of the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the site designation satisfies those criteria. The EPA's EA provides an extensive evaluation of the criteria and other related factors for the modification of the ODMDS.

General Criteria (40 CFR 228.5)

(a) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

Historically, an interim site located approximately 1.6 nautical miles from shore was used for ocean disposal of dredged material from Port Everglades Harbor but was discontinued in the 1980s due to the significant potential for adverse impacts from sediments to nearby coral reef resources. EPA designated the existing Port Everglades Harbor ODMDS in 2005 to fulfill the need for an EPA designated ODMDS near Port Everglades. The evaluation for the 2005 designation included considerations of potential interference with other activities in the marine environment including avoiding areas of existing critical fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. EPA re-considered the evaluations from 2010 through to the present time throughout the NEPA process.

(b) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The ODMDS area will be used only for disposal of dredged material found to be suitable under the Ocean Dumping Regulations at 40 CFR parts 220 through 228. Based on the USACE and EPA sediment testing and evaluation procedures, disposal of dredged maintenance material and proposed new work material is not expected to have any long-term impact on water quality. The Port Everglades ODMDS is located sufficiently far from shore and fisheries resources to allow temporary water quality disturbances caused by disposal of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

(c) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the ODMDS should provide sufficient long-term disposal capacity expected for anticipated dredging projects, while also permitting effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

Based on projected new work and maintenance dredging, and permitted dredged material disposal needs, EPA and the USACE estimated that the ODMDS should be approximately 3.21 nmi² in size to meet the anticipated long-term disposal needs of the nearby area. Expanding the ODMDS to 3.21 nmi² provides an estimated capacity of approximately 6.7 million cubic yards, which is sufficient to manage future unknown disposal operations from public and private entities and provide protection of the marine environment at the ODMDS.

When determining the size of the site, EPA considered the need to implement effective monitoring and surveillance programs to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material. EPA and the USACE have developed a SMMP for the site that, when implemented, will be used to determine if disposal at the site is significantly affecting the environment within the site or adjacent areas. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and an assessment of the benthic community structure.

(d) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The Port Everglades ODMDS is beyond the edge of the continental shelf.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The ODMDS is on the Florida Continental Slope, 3.3 nautical miles offshore of Fort Lauderdale, Florida. Water depths range from -179 to -232 meters (-587 to -761 feet), with an average depth of 207 meters (-678 feet). Sediments consist of sand with various mixtures of sand and silts with scattered rubble hardbottom. The EA contains a map of the ODMDS. The ODMDS remains fully off the continental shelf at a distance that is not expected to allow sediments to travel to nearby shore-associated coral reef habitat.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The ODMDS location was selected to avoid the presence of any exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The center of the ODMDS is several miles from any beaches or amenity areas. No significant impacts to beaches or amenity areas associated with the Port Everglades ODMDS have been detected, and the expansion is not expected to affect that conclusion. The U.S. Navy maintains facilities south of the ODMDS, and EPA and the USACE consulted the Navy to verify that no impediments will exist with the expanded ODMDS.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Only suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR parts 227 and 228 will be disposed in the ODMDS and only pursuant to a duly issued permit or authorization (e.g., contract specifications) for a Federal project with concurrence by EPA. Dredged materials dumped in this area will be primarily sand and rock with some fines that originate from the Port Everglades Harbor. Average yearly disposal of dredged maintenance material into the ODMDS is expected to be approximately 30,000 cubic yards and variable volumes of new work dredged material up to 6.7 million cubic yards. None of the material is packaged in any manner.

Under section 103 of the MPRSA, the USACE is the Federal agency that initially determines whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of Federal navigation projects involving ocean disposal of dredged materials, in lieu of the permit procedure, the USACE authorizes projects based upon application of the same criteria, and other factors to be evaluated, the same procedures, and the same requirements that apply to the issuance of permits. The USACE applies the EPA's ocean dumping criteria when evaluating permit requests for (and implementing Federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and Federal projects involving ocean dumping of dredged material are subject to EPA's review and concurrence. EPA may concur, with or without conditions, or decline to concur on the request for concurrence on the suitability of dredged material for disposal in the ODMDS. If EPA concurs with

conditions, the final permit or project authorization (e.g., contract specifications) must include those conditions. If EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, the USACE cannot issue the permit or authorize ocean dumping for the Federal project.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

EPA expects monitoring and surveillance at the ODMDS to be feasible and readily performed from ocean or regional class research vessels. Monitoring and surveillance are addressed in the SMMP. The area of the ODMDS has been surveyed and sampled in 2004, 2007 and 2014. EPA will monitor the site for physical, biological, and chemical attributes as well as for potential impacts. Bathymetric surveys will be conducted routinely, and benthic infauna and epibenthic organisms will be monitored, as described in the SMMP for the site.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Current velocities vary throughout the water column and are subject to wind and the Florida current-based circulations which are generally northerly with eddies occurring that drive currents south. Currents measured at nearby sites are predominantly to the north or south on the order of 1-4 knots (50-200 centimeters per second).

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

Historic disposal of dredged material in the existing Port Everglades ODMDS has resulted in temporary increases in suspended sediment concentrations during disposal operations, burial of benthic organisms within the site, and slight changes in the abundance and composition of benthic assemblages. Short-term, long-term, and cumulative effects of dredged material disposal in the ODMDS would be similar to those for the previously designated site and are expected to be temporary and return to baseline over time.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

The transport of dredged material to the ODMDS will cause minor, short-term interferences with commercial and recreational boat traffic. during normal disposal operations. EPA has not identified an area of special scientific importance at or near the site. There are no aquaculture areas near the site. There may be recreational fishing in the area. The likelihood of direct interference with these activities, however, is low. The U.S. Navy, Fort Lauderdale Branch, Naval Surface Warfare Center range is located south of the ODMDS and the expansion of the ODMDS will not impair U.S. Navy operations in the area. The SMMP for the ODMDS contains provisions for corrective measures if potential adverse impacts to potential hardbottom habitat related to dredged material disposal are identified.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

Water quality at the site is typical of the Florida coast. Water and sediment quality analyses conducted in the vicinity of the ODMDS and experience with historic disposal at the existing Port Everglades ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the region.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the ODMDS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 14 years. Nuisance species have not been found. The dredged material to be disposed at the ODMDS is expected to be from

similar locations to those dredged previously; therefore, it expected that any benthic organisms transported to the site would be relatively similar in nature to those already present.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

EPA conducted a survey of this site in 2013 to identify areas of potential hardbottom resources as well as any historical artifacts. The survey revealed the presence of only two anomalies that, when evaluated, were not indicative of potential historical or natural features. Probable wreckage from one modern sailing vessel was identified in the northeast corner of the site. Scattered rubble covering potential hardbottom habitat was identified scattered within the expanded footprint.

The SMMP for the ODMDS contains measures to monitor potential identified hardbottom resources.

III. Environmental Statutory Review

a. National Environmental Policy Act

EPA's primary voluntary NEPA document for expanding the existing Port Everglades ODMDS is the EA, prepared by EPA in cooperation with the USACE and issued for public review and comment as draft in January 2020. Anyone desiring a copy of the EA may access it through the docket for this action (Docket ID No. EPA-R04-OW-2020-0056) or obtain a copy from the address given above. The draft EA issued in March 2020 amends the draft EA that was previously published for public review and comment in August 2013. Comments received on the March draft EA are provided in the Response to Comments document appended to the docket. The EA provides the threshold environmental review for modification of the ODMDS.

The action discussed in the EA is the designation of an ODMDS offshore Port Everglades, Florida. The purpose of the action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The reason for the ODMDS expansion is based primarily on demonstrated lack of capacity for ocean disposal of dredged material from the Port Everglades

Harbor area including the upcoming Federal Navigation Project and any additional port projects into the future. The actual need for ocean disposal for particular, specific future projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process for reviewing ocean disposal actions and a public review process for its own actions to ocean dump dredged material from Federal Projects. Subsequent proceedings to develop permits and terms of the authorization for Federal projects will include evaluation of disposal alternatives; the existence of a designated site merely provides an option for disposition of suitable material.

EPA's EA discusses the reasons for expanding the ODMDS and examines ocean disposal site alternatives. The reasons to expand the existing Port Everglades ODMDS are based on: future capacity modeling; potential movement of fine sediments estimated dredging volumes for proposed projects; and limited capacity of upland disposal facilities in the area. EPA considered other configurations for the expanded site but the other options were discarded due to potential for adverse impacts to protected coral resources. The following three ocean disposal alternatives were considered in the EA.

No Action Alternative

EPA identified the No Action Alternative as not modifying the size of the existing Port Everglades ODMDS. Implementation of this alternative would not have addressed the inadequate capacity at the existing ocean dump site to accommodate future ocean disposal of dredging projections. As a result, the No Action Alternative does not meet the action's purpose and need. However, EPA developed and evaluated the No Action Alternative as a basis to compare the effects of the other alternatives considered.

Alternative 1: Modification of the existing Port Everglades ODMDS to encompass a 3.21 nmi² area in a north-south orientation (Preferred Alternative).

Modification of the existing Port Everglades ODMDS in a north-south orientation to encompass a 3.21 nmi² area as described above is the environmentally and operationally

preferred alternative and considered the most viable option. The existing Port Everglades ODMDS is relatively small and has a limited capacity. Modifying the existing Port Everglades ODMDS to increase capacity would accommodate the anticipated volumes of material projected for possible ocean disposal associated with: the congressionally authorized widening and deepening of the Port Everglades Harbor Federal navigation channel; congressionally authorized maintenance dredging; the Broward County sand bypass and navigation projects; and potential future private interests. It is the most feasible option based on containing dredged material from disposal operations while potentially affecting the least potential hardbottom habitat. A detailed justification for this preferred alternative is included in Section 2 in the EA.

Alternative 2: Modification of the existing Port Everglades ODMDS to encompass a 2.89 nmi² area in an east-west orientation.

In order to inform viable options for expanding the existing site, EPA evaluated the data and information included in the September 2013 *Evaluation of Dredged Material Behavior at the Port Everglades Harbor Federal Project Ocean Dredged Material Disposal Site*. EPA specifically considered the option of expanding the site in an east-west orientation. Although designating an expanded ODMDS in an east-west orientation would provide adequate site capacity, an east-west orientation had a greater level of risk for adverse impact to hardbottom habitat. As described in the EA, a site more adequately protective of potential hardbottom areas was selected as the preferred alternative with a north-south orientation (Alternative 1).

b. Magnuson-Stevens Act

The USACE, in conjunction with EPA, submitted an essential fish habitat (EFH) assessment to the National Marine Fisheries Service (NMFS), pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1855(b)(2). The USACE determined that the expansion of the existing Port Everglades ODMDS will not significantly affect managed species or EFH.

On March 13, 2020, EPA issued a letter to NMFS that described the EPA's plans to conduct a Remotely Operated Vehicle (ROV) survey to supplement the available data to further

characterize potential hardbottom geomorphology and biological community in the expanded footprint of the Port Everglades ODMDS. On March 19, 2020, NMFS responded by letter requesting that in the event results from the ROV survey indicate that significant hardbottom resources occur in the expanded ODMDS and use of the ODMDS will adversely affect those resources, EPA should re-initiate consultation. EPA is committed to continue working in close coordination with NMFS and will evaluate the ROV survey results when they become available. If significant hardbottom resources occur in the expanded ODMDS and the use of the ODMDS will adversely affect those resources, EPA will re-initiate consultation with NMFS pursuant to the Magnuson-Stephens Act.

c. Coastal Zone Management Act

EPA evaluated site designations for consistency with the enforceable policies of Florida's approved coastal zone management program. On behalf of EPA, the USACE Jacksonville District documented that the site expansion is consistent with the Florida Coastal Management Program to the maximum extent practicable. The Florida Department of Environmental Protection issued Coastal Zone Consistency for the Port Everglades ODMDS on April 29, 2011. EPA further coordinated with Florida to determine whether any additional information has become available that may warrant changes to the State's 2011 determination. Florida responded, on April 17, 2020, that its position has not changed and that the action remains consistent to the maximum extent practicable with the enforceable policies of the State's approved coastal program.

d. Endangered Species Act

The Endangered Species Act, as amended, 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. EPA has concluded consultation with NMFS, which

provided a Biological Opinion for the South Atlantic District of the U.S. Army Corps of Engineers on March 7, 2014, applicable for the proposed expansion of the ODMDS. NMFS's Biological Opinion indicated that the expanded ODMDS will have no effect on federally-listed species or critical habitat. During a teleconference between EPA and NMFS on August 18, 2020, and in email correspondence issued on April 21, 2021, NMFS verified there are no changes to its Biological Opinion.

The expansion of the Port Everglades ODMDS will have no effect on federally-listed terrestrial or freshwater species under the jurisdiction of the U.S. Fish and Wildlife Service.

e. National Historic Preservation Act

The National Historic Preservation Act (NHPA), 16 U.S.C. 470 to 470a-2, requires Federal agencies to consider the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. In a letter dated April 9, 2020, the Florida State Historic Preservation Office stated that no historic properties would be affected by the expansion of the ODMDS.

IV. Statutory and Executive Order Reviews

This rule expands the area of the Port Everglades ODMDS pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Executive Order 13089: Coral Reef Protection

This action considers Executive Order 13089 on Coral Reef Protection "to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment." The SMMP is designed to reduce potential impacts from sediments on corals from vessels during transit to the ODMDS.

c. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

d. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

e. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

f. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on this action from State and local officials.

g. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 because the modification of the existing Port Everglades ODMDS will not have a direct effect on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. In addition, EPA sent notification of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida regarding the proposed action to modify the Port Everglades ODMDS and received no comments. Thus, Executive Order 13175 does not apply to this action.

h. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

i. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866.

j. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action includes environmental monitoring and measurement as described in EPA's SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

k. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of expanding the Port Everglades ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1412 and 1418.

Dated: July 13, 2021.

John Blevins,
Acting Regional Administrator, EPA Region 4.

For the reasons set out in the preamble, EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228 – CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (h)(22)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

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(h) * * *

(22) * * *

(i) Location: Corner Coordinates (NAD 1983) 26° 06.500', 80° 01.000'; 26° 06.500', 80° 02.578'; 26° 08.750, 80° 02.578'; 26° 08.750', 80° 01.000'.

(ii) Size: Approximately 3.2 square nautical miles in size.

(iii) Depth: Ranges from approximately 587 to 761 feet (179 to 232 meters).

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(vi) Restrictions:

(A) Disposal shall be limited to dredged material from the Port Everglades, Florida, area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR parts 227 and 228; and

(C) Transportation and disposal shall comply with conditions and monitoring requirements set forth in the most recent approved Site Management and Monitoring Plan and conditions and monitoring requirements incorporated into the permit or Federal project authorization.

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